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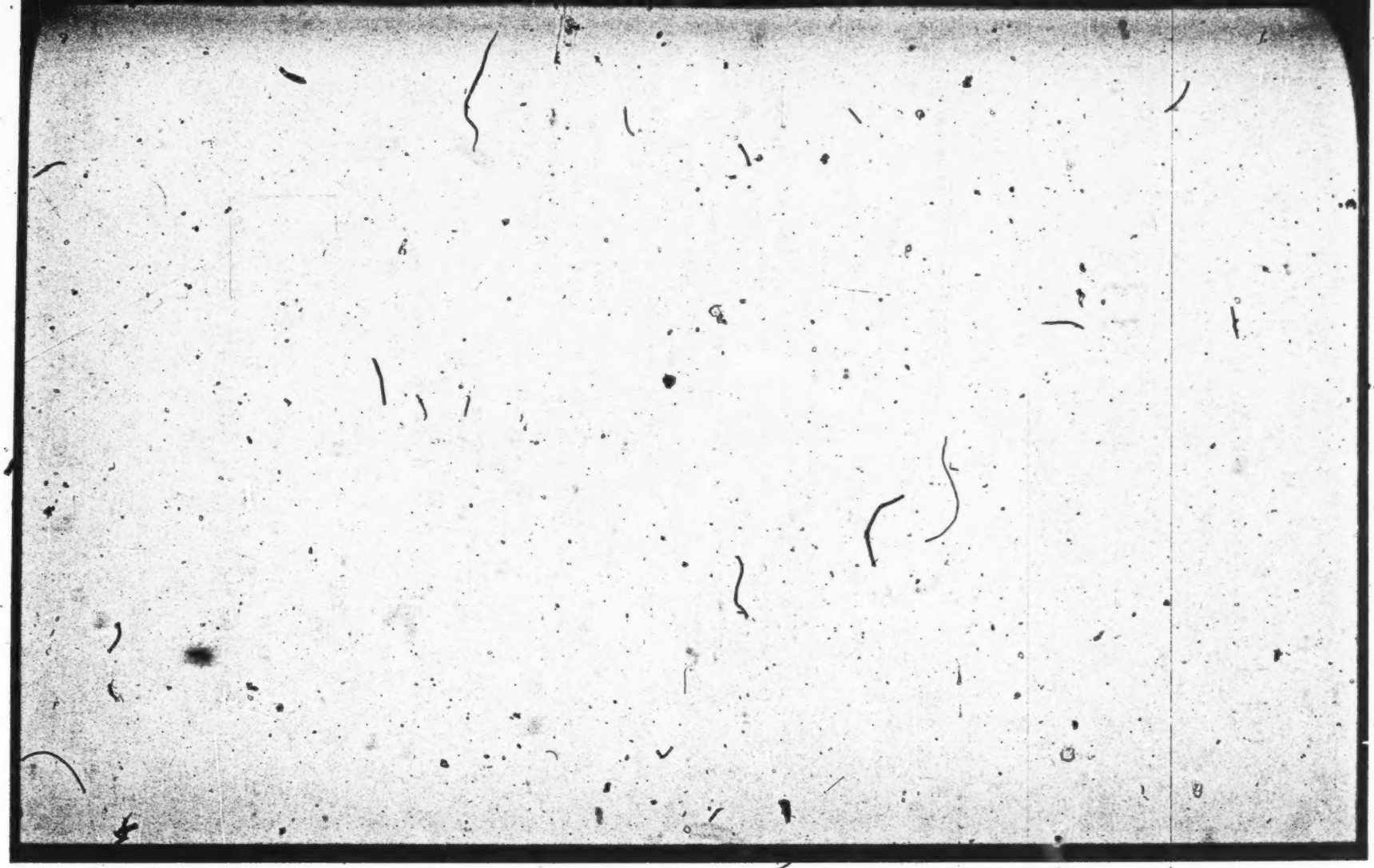

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. —

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, petitioner

v.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation, a Corporation

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA[1]

The Solicitor General, on behalf of the Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia, entered in the above-entitled cause on February 2, 1931 (R. 47), reversing the judgment of the Supreme Court of the District of Columbia.

STATEMENT

Pursuant to the Act of February 13, 1929, c. 182, 45 Stat. 1166, the respondent company filed a peti-

[1] The questions presented in this case are substantially similar to those presented in *Ray Lyman Wilbur, as Secretary of the Interior, Petitioner*, v. *The United States of America ex rel. Vindicator Consolidated Gold Mining Company, a Corporation*, and the argument for granting the petition is the same.

tion in the Supreme Court of the District of Columbia to review a final decision of the Secretary of the Interior upon its claim under the War Minerals Relief Act of March 2, 1919, c. 94, 40 Stat. 1272, based in part upon expenditures for interest paid on money borrowed, which was disallowed by the Secretary of the Interior in so far as such expenditures were concerned. The Supreme Court of the District dismissed this petition, but upon appeal to the Court of Appeals of the District of Columbia this decision was reversed and remanded to the Secretary for further proceedings. The action of a former Secretary of the Interior in disallowing the same claim was upheld by this Court in *Work* v. *Chestatee Corporation,* 267 U. S. 185, prior to the enactment of the Act of February 13, 1929.

On March 5, 1919, the Chestatee Pyrites & Chemical Corporation (hereinafter called the respondent) filed a claim with the Secretary of the Interior under the provisions of Section 5 of the War Minerals Relief Act of March 2, 1919. (Appendix, p. 15.) In so far as is material, this Act provides:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce * * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * *, to

supply the urgent needs of the Nation in the prosecution of the war * * *.

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; * * * *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained * * * pyrites * * * in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce * * * pyrites * * * for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary * * *.

In its claim the respondent asked an award for net losses alleged to have been sustained in pro-

ducing and preparing to produce pyrites under the conditions referred to in the Act of March 2, 1919. An award was made in favor of the respondent in the sum of $223,529.17. (R. 12.) After the adoption of the Act of February 23, 1921, which amended Section 5 of the Act of March 2, 1919 (Appendix, p. 15), the respondent asked for a rehearing upon its claim, and upon such rehearing a further award of $469,784.62 was made (R. 26), and the total amount of such awards, $693,313.79, was paid to the respondent. The award disallowed items claimed by the respondent as payments of interest upon money borrowed by the respondent. Thereafter the respondent filed a petition in the Supreme Court of the District of Columbia praying a writ of mandamus to compel the then Secretary of the Interior to adjust and pay the alleged loss sustained by the respondent through the payment of interest as aforesaid. The writ was granted, and upon appeal to the Court of Appeals of the District of Columbia that court affirmed the judgment of the lower court. *Work, Secretary of the Interior,* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 54 App. D. C. 380.

Upon appeal to this Court the judgment of the Court of Appeals of the District of Columbia was reversed by a judgment rendered on March 2, 1925. *Work, Secretary of the Interior,* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* 267 U. S. 185.

The respondent under the Act of February 13, 1929, which provided for review of the decision of the Secretary of the Interior on questions of law, filed its petition for review and mandamus in this case. The petition (R. 2) alleged, in substance, the filing of a claim with the Secretary of the Interior under the Act of March 2, 1919, based upon interest paid on money borrowed by respondent which was used in producing and preparing to produce pyrites, and that successive Secretaries of the Interior, including the petitioner, had refused to make an award to the respondent upon its claim for such interest. The petition asked a review of this decision under the Act of February 13, 1929, and appropriate relief.

The petitioner originally filed a response to the petition for review and mandamus, to which were annexed exhibits showing the action of the Secretary of the Interior in denying respondent's claim. (R. 9.) The response was withdrawn by stipulation (R. 28), leaving the exhibits annexed to be considered by the court, and the petitioner answered. The answer (R. 30) alleged, in substance, that the various Secretaries of the Interior, in the exercise of the discretion confided in them by the Act, refused to allow claims based upon the payment of interest upon borrowed money, and that respondent's claim had therefore been disallowed. The reasons for this conclusion were set forth in the answer. The case was heard and determined upon the pleadings.

The Supreme Court of the District of Columbia dismissed the petition and ordered and decreed that "* * * the questions of law raised by the petitioner were properly adjudicated by the Secretary of the Interior * * *." (R. 40.) Upon appeal to the Court of Appeals of the District of Columbia, that court reversed the judgment of the lower court and remanded the case "for further proceedings not inconsistent herewith," holding that the claim for interest paid should be allowed as a matter of law. It referred to its prior opinion in *Work* v. *Chestatee Corporation,* 54 App. D. C. 380, and also to the reversal of that decision by this Court in *Work* v. *Chestatee Corporation,* 267 U. S. 185, but stated that the reversal by this Court was not upon the ground that its prior decision had construed the statute erroneously, but upon the ground that it had no jurisdiction to review the construction placed upon the statute by the Secretary of the Interior. (R. 45–47.)

SPECIFICATIONS OF ERROR TO BE URGED

The court below erred—

(1) In holding that the Secretary of the Interior in the exercise of his discretion was not justified in disallowing the portion of respondent's claim which was based upon interest on borrowed money.

(2) In holding that as a matter of law the petitioner was required to make an allowance for any

net loss sustained by the respondent because of interest paid on borrowed money.

(3) In holding that the petitioner should determine as a matter of fact the net loss sustained by the respondent in the payment of interest on borrowed money.

(4) In holding that petitioner's discretion under the Act of March 2, 1919, disallowing claims based upon interest paid on borrowed money, was eliminated by the Act of February 13, 1929.

(5) In directing the Secretary to allow respondent's claim without determining whether the allowance of the claim would in his opinion be just and equitable.

REASONS FOR GRANTING THE WRIT

(1) Unless the Act of February 13, 1929, is to be interpreted as depriving the Secretary of all discretion in the allowance of claims, the decision in the present case is in conflict with the decisions of this Court.

In *Work* v. *Rives*, 267 U. S. 175, this Court held that under Section 5 of the Act of March 2, 1919, it was within the discretion of the Secretary of the Interior to disallow a claim based upon the cost of obtaining a release from a contract to buy land, and that the exercise of discretion by the Secretary of the Interior in disallowing such a claim was not subject to review by mandamus.

In *Work* v. *Chestatee Corporation*, 267 U. S. 185, this Court considered the same portion of the same

claim which is involved in this case, and held that under Section 5 of the Act of March 2, 1919, it was within the discretion of the Secretary of the Interior to disallow the claim for interest paid by the respondent upon money borrowed by the respondent to enlarge its plant to meet the war necessities, and that the exercise of this discretion was not subject to review by mandamus.

These cases were decided by this Court prior to the enactment of the Act of February 13, 1929. At the time they were decided there was no provision in the statutes for the review of a decision by the Secretary of the Interior in connection with claims under the War Minerals Relief Act, and reference was made to the absence of any provision for such review in the opinion of this Court in *Work* v. *Rives, supra*. The Act of February 13, 1929, limits the review to "any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment" of claims. The Act expressly provides that "The decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court."

The decision of the court below draws no distinction between the broad discretion of the Secretary of the Interior in making such adjustments and payments in each case as he may determine to be just and equitable, which this Court held in *Work* v. *Rives* and *Work* v. *Chestatee Corporation, supra*, was conferred upon him by the Act of March

2, 1929, and his discretion, also conferred by that Act, to determine finally and conclusively all questions of law in connection with its construction. Nor does the decision of the Court below consider the effect upon these grants of discretion of the Act of February 13, 1929, which merely provides for judicial review of the Secretary's decision on any question of law.

Proceedings in accordance with its opinion as directed by the court below will necessarily require the determination of any loss resulting from the expenditure in question, and the allowance thereof by the Secretary, without consideration or determination by him as required by the Act, as to whether such an allowance is just and equitable. This being the effect of the decision, we submit that the decision is in conflict with the decisions of this Court in *Work* v. *Rives* and *Work* v. *Chestatee Corporation, supra*. This necessarily follows because the Act of February 13, 1929, does not touch or affect in any way the broad discretion reposed in the Secretary to determine, according to his own sense of equity and justice, whether any claim under the Act should as a matter of favor be allowed, as declared and defined by this Court in *Work* v. *Rives, supra*.

2. The construction of the War Minerals Relief Act adopted by the Secretary of the Interior in refusing to allow the respondent's claim for expenditures made for interest on borrowed money was correct in point of law. This construction is sup-

ported by the consistent Departmental construction of the statute since its enactment in March, 1919.* Since that time the Secretaries of the Interior have consistently refused to allow claims under this Act for interest paid on borrowed money. (See Answer, R. 36.) There is nothing, we submit, in the Act of February 13, 1929, which shows Congressional disapproval of this construction.

3. The question whether the determination of claims under the War Minerals Relief Act is still left to the sense of justice and equity of the Secretary of the Interior, as this Court held it was prior to the enactment of the Act of February 13, 1929, is a question of the utmost importance in the administration of this law, as is also the question as to whether or not claims of the kind here involved are, as a matter of law, allowable in the exercise of such discretion by the Secretary. There are a large number of cases now pending which will be decisively disposed of by the decision of this Court upon these two questions presented by this case.* Since the Act of February 13, 1929, provides that de-

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*Under date of April 29, 1931, the Solicitor of the Department of the Interior stated:

According to the records of the Interior Department there are 1,268 War Minerals claims, of which 396 involve purchase of property and leases and interests as follows:

Property	$3,062,867
Leases	408,608
Interest	206,390

Of these 396 claims, 346 are the subject of suits filed in the Courts of the District under the act of February 13, 1929. Approximately 235 of the 346 cases involve property

cisions of the Secretary of the Interior may be reviewed only upon petition to the Supreme Court of the District of Columbia, unless these questions are reviewed by this Court the Government will be bound, in all similar cases, by the decision of the court below.

Wherefore, it is respectfully submitted that the petition should be granted.

THOMAS D. THACHER,
Solicitor General.

MAY, 1931.

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and leases, and 111 involve interest. The amount claimed for property would be reduced by reductions for salvage, while the amount claimed for interest would be increased and possibly more than doubled if computed to the date of settlement of the claim.

To conclude, therefore, it appears that there are approximately 235 cases involving purchase of property which includes leases and 111 involving claims for interest and the estimated amount involved would be in excess of $3,000,000.

MEMORANDUM IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the Court of Appeals of the District of Columbia (R. 45) is reported in 47 F. (2d) 424. No opinion was rendered by the Supreme Court of the District of Columbia but its judgment, stating the basis of its decision, is in the record. (R. 39.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered February 2, 1931. (R. 47.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

1. Was the discretion of the Secretary of the Interior under the Act of March 2, 1919, to disallow claims, the allowance of which he determined to be unjust and inequitable, removed by the Act of February 13, 1929?

2. Was the action of the Secretary of the Interior in disallowing respondents' claim based upon interest paid on borrowed money erroneous as a matter of law?

STATUTES INVOLVED

The applicable statutes appear in the Appendix.

ARGUMENT

The argument submitted in support of the petition for certiorari filed by the Secretary of the Interior in *Ray Layman Wilbur, as Secretary of the Interior,* v. *The United States ex rel. The Vindicator Consolidated Gold Mining Co., a corporation,* is applicable in support of this petition, and reference is made to the brief in that case. It should be noted that the claim involved in this case was the same claim which was considered by this Court in *Work* v. *Chestatee Corporation,* 267 U. S. 185. The judgment of the court below, based upon its opinion in this case, has the effect of directing the petitioner to allow respondent's claim, irrespective of his views of its justice and equity, and thereby deprives him of the discretion conferred upon him by statute.

CONCLUSION

Because of the importance of the question involved in the administration of the law by the Secretary of the Interior and the apparent conflict between the decision of the court below and the decisions of this Court, it is submitted that the

petition should be granted, and that the judgment below should be reversed.

Respectfully submitted.

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Solicitor General.

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G. A. IVERSON,
Special Assistant to the Attorney General.

WHITNEY NORTH SEYMOUR,
Attorney.

E. C. FINNEY,
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MAY, 1931.

APPENDIX

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war, said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling

and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen

hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be

claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for cer-

tiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

U. S. GOVERNMENT PRINTING OFFICE: 1931